

**IN THE HIGH COURT OF UTTARANCHAL,
AT NAINITAL**

WRIT PETITION NO. 3607 M/S 2001.

(Old No. 16540 of 1994)

Mohan Lal.

.....Petitioner.

Vs.

Addl. District Judge, Roorkee & others. ...Respondents.

Hon'ble Rajesh Tandon, J.

By the impugned order the petitioner has challenged the order dated 21.01.1994 by which the application for additional evidence has been rejected.

Briefly stated the respondent has filed an application under section 21(1) (b) of U.P. Act No. 13 of 1972 for release of the disputed premises in his favour. During the pendency of appeal an application has been filed for permitting the petitioner to lead additional evidence. The petitioner contested the proceedings on the ground that the building is in a dilapidated condition. The petitioner has contested the proceedings on various other grounds.

The application under section 21(1) (b) has been allowed by the Prescribed Authority on 26.05.1992. The petitioner has preferred an appeal with a prayer that the Architect report be admitted as evidence by way of additional evidence. The Appellate court has rejected the application.

It is settled law that the evidence can always be taken on record to come to the conclusion as to whether the building is in dilapidated condition or not and both the parties had opportunity to produce the evidence.

Under section 10(2) of the U.P. Act No.13/1972 the appellate court has every power to admit additional evidence. It reads as under:

“10(2) The appellate authority may confirm, vary or rescind the order, or remand the case to the District Magistrate for rehearing, and may also take any additional evidence and pending its decision, stay the operation of the order under appeal on such terms, if any, as it think fit.”

In view of the aforesaid circumstances the order dated 21.01.1994 is quashed.

The appellate Authority shall take the document on record and shall decide the appeal giving the opportunity to the respondent to rebut the same. The appeal shall be decided within four months from the date of filing the certified copy of the order as the case is old one of the year 1994

The writ petition is disposed of accordingly. No order as to costs.

Dated: 17.8.2004
S.S. Negi.

(Hon'ble Rajesh Tandon J.)